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ALEXANDER L. STEVAS

No. 81-1843

In the Supreme Court of the United States

OCTOBER TERM, 1981

PEOPLE OF THE STATE OF ILLINOIS,
Petitioner,

vs.

JOHN ANDREAS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIRST JUDICIAL DISTRICT

TYRONE C. FAHNER
Attorney General, State of Illinois
188 West Randolph Street, Suite 2200
Chicago, Illinois 60601

Attorney for Petitioner.

RICHARD M. DALEY
State's Attorney
County of Cook
500 Richard J. Daley Center
Chicago, Illinois 60602
MICHAEL E. SHABAT,
JOAN S. CHERRY,
JOEL A. STEIN,
MICHAEL J. KELLY,
Assistant State's Attorneys

Of Counsel

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QUESTION PRESENTED

Whether an individual has no interest protected by the Fourth Amendment in a package that has been subjected to a lawful customs inspection and then delivered to him under controlled conditions after the discovery of illicit drugs.

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PETITION FOR A WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT, FIRST JUDICIAL DISTRICT

Petitioner, People of the State of Illinois, respectfully prays that a writ of *certiorari* issue to review the judgment and opinion of the Illinois Appellate Court, First Judicial District, which was entered on September 15, 1981.

OPINION BELOW

The opinion of the Illinois Appellate Court is reported at 100 Ill. App. 3d 396, 426 N.E.2d 1078 (1st Dist. 1981), and appears herein as Appendix A. The ruling of the trial court on respondent's motion to suppress evidence is not reported, and appears herein as Appendix B. The order of the Illinois Supreme Court of February 2, 1982, denying petitioner's

petition for leave to appeal is reported at 88 Ill. 2d 20 (1982), and appears herein as Appendix C.

JURISDICTION

The judgment of the Illinois Appellate Court was entered on September 15, 1981. A timely petition for leave to appeal was denied by the Illinois Supreme Court on February 2, 1982. That order appears herein as Appendix C. This petition was filed within 60 days from that date. This court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

CONSTITUTIONAL PROVISION AT ISSUE

Amendment IV

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

STATEMENT OF THE CASE

The Search

On the morning of February 21, 1979, Ronald Drozek, a United States Customs Inspector, was assigned to the Lufthansa cargo facility at O'Hare Airport, Chicago, Illinois. (R. 41) Pursuant to his duties as a Customs Inspector, Mr. Drozek reviewed documents pertaining to a container which had been shipped from Calcutta, India, and was addressed to respondent at 61 Goethe Street, Chicago, Illinois. (R. 41) After re-

viewing the documents, he examined the cargo which was enclosed in a sheet metal container approximately 4 feet long, 4 feet wide, and 1½ feet thick. (R. 26, 35, 42)

Inspector Drozek opened the container with keys attached to the airline documents and found a table top approximately 3 feet in diameter and 8 to 10 inches thick. (R. 4, 26, 43) After drilling into the table, he discovered a substance which field tested positive for marijuana. (R. 4-5, 43) He then contacted Drug Enforcement Administration agents who confirmed that the substance being smuggled into the United States was marijuana. He then arranged for a controlled delivery of the container and contraband by the DEA to respondent.

The following day, February 22, 1979, DEA Agent Kenneth Labek and Chicago Police Officer Wayne Lipsek received the resealed container from Customs Inspector Drozek and delivered it to respondent at 61 Goethe Street. (R. 15-16, 31) Officer Lipsek was dispatched to obtain a state search warrant while Agent Labek maintained surveillance on respondent's apartment. (R. 16, 17, 22, 23, 31, 28) Approximately 30 minutes later, Agent Labek observed respondent in the hallway with the container. (R. 32, 37-38) He placed respondent under arrest and seized the container. (R. 17) Officer Lipsek was radioed and told to disregard the warrant because respondent had already been arrested. (R. 38)

Agent Labek then transported the container to Chicago Police Headquarters at 1121 South State Street where the container was opened and the table removed. (R. 18 35-37, 39) The table was then opened and the marijuana which had been previously uncovered by Customs Inspector Drozek was recovered. (R. 37, 68) The marijuana had a street value of $100,000.

Rulings on Motion to Suppress

Prior to trial, respondent moved to suppress the marijuana. He alleged that the reopening of the container violated his rights under the Fourth Amendment to the United States Constitution. (R. 91-92) The People asserted that because the container in which the contraband had been secreted was lawfully searched during a legal customs inspection search and was thereafter delivered to defendant under controlled conditions, the defendant had no legitimate expectation in the container or its contents and consequently the reopening of the container was lawful. The trial court, erroneously believing that the decisions in *United States v. Chadwick*, 433 U.S. 1 (1977) and *Arkansas v. Sanders*, 442 U.S. 753 (1979), necessitated the obtaining of a search warrant for the reopening of a container following a controlled delivery, suppressed the evidence. (R. 61-62)

On appeal the People again asserted that after the smuggled contraband had been discovered during a lawful customs inspection, the defendant had no reasonable expectation of privacy in the container. In support of their argument the petitioner noted that the decisions in *United States v. Bulgier*, 618 F.2d 472 (7th Cir. 1980), *cert. denied*, 449 U.S. 843 (1980) and *United States v. Andrews*, 618 F.2d 646 (10th Cir. 1980), *cert. denied*, 449 U.S. 824 (1980), had held that the subsequent reopening of the container was merely a reassertion of control over the container because it had previously been the subject of a proper customs search and a controlled delivery. The Illinois Appellate Court, rejecting the reasoning and holdings of the Seventh and Tenth Circuit Courts, held that because the contraband had not been seized at the Customs check point, respondent's Fourth Amendment rights were somehow violated when the container was reopened after the controlled delivery.

Petitioner's subsequent petition for leave to appeal was denied by the Illinois Supreme Court.

REASON FOR GRANTING THE WRIT

THE ILLINOIS APPELLATE COURT, REJECTING THE CONTRARY DETERMINATION BY SEVERAL UNITED STATES CIRCUIT COURTS OF APPEALS AS WELL AS THIS COURT'S DETERMINATION THAT THE FOURTH AMENDMENT PROTECTS ONLY LEGITIMATE EXPECTATIONS OF PRIVACY, ERRONEOUSLY HELD THAT RESPONDENT POSSESSED A PROTECTED FOURTH AMENDMENT INTEREST IN A PACKAGE THAT HAD BEEN SUBJECTED TO A LAWFUL CUSTOMS INSPECTION AND THEN DELIVERED TO HIM UNDER CONTROLLED CONDITIONS.

The Illinois Appellate Court, rejecting the contrary determinations by the Seventh Circuit in *United States v. Bulgier*, 618 F.2d 472 (1980) and the Tenth Circuit in *United States v. Andrews*, 618 F.2d 646, *cert. denied*, 449 U.S. 824 (1980), held that the warrantless reopening of a container violated respondent's Fourth Amendment rights where the container had been lawfully searched during a customs inspection, contraband discovered secreted therein, and the container then delivered to respondent under controlled conditions. The holding of the Illinois Appellate Court from which the writ of *certiorari* herein is sought is not only contrary to the purpose and intent of *United States v. Chadwick*, 433 U.S. 1 (1977), *Arkansas v. Sanders*, 442 U.S. 753 (1979), and their progeny *Walter v. United States*, 447 U.S. 649 (1980), but adds an entirely new and unwarranted dimension to this Court's determination that the Fourth Amendment only protects an individual's legitimate expectations of privacy. Although this Court has never addressed this "oft-recurring" and as yet unresolved issue, as Mr. Justice Rehnquist noted in granting a stay in a case in which this issue was raised but not reached,

> The case presents important issues regarding the level of expectation of privacy a recipient of a package containing contraband shipped through the international mails may have when the packages have been previously subjected to a lawful customs search and delivered under controlled conditions and constant surveillance. *California v. Riegler*, 449 U.S. 1319, *cert. granted, judgment vacated and remanded,* 453 U.S. ____, 101 S.Ct. 2680 (1981).

Although this Court has not yet reached this issue, the majority of courts that have recognized that the recipient of a package that was the subject of a proper customs search and then delivered to him under controlled conditions has no legitimate expectation of privacy in the package and that any subsequent seizure and search of the package is merely a reassertion of control over the package. These courts have therefore held that after a lawful customs inspection and discovery the recipient has no rights in the package which are protected by the Fourth Amendment and therefore, no warrant is required to justify the subsequent search and seizure. *United States v. Washington*, 586 F.2d 1147 (7th Cir. 1979); *United States v. Garcia*, 605 F.2d 349 (7th Cir. 1979), *cert. denied*, 446 & S. 984 (1980); *United States v. Emery*, 541 F.2d 887 (1st Cir. 1976), *overruled on other grounds, United States v. Miller*, 636 F.2d 850 (1st Cir. 1980); *United States v. Bulgier*, 618 F.2d 472 (7th Cir. 1980), *cert. denied*, 449 U.S. 843 (1980); *United States v. Andrews*, 618 F.2d 646 (10th Cir. 1980), *cert. denied*, 449 U.S. 824 (1980); *United States v. Ford*, 525 F.2d 1308 (10th Cir. 1975), *United States v. DeBerry*, 487 F.2d 448 (2d Cir. 1973).

Some courts however, in the erroneous belief that an individual has a legitimate expectation of privacy in a package following a lawful customs inspection and the discovery of contraband, have decided that the controlled delivery package is simply another *Sanders* container and that the recipient's

Fourth Amendment rights are therefore violated if no warrant is secured prior to the reopening of the package. *People v. Andreas*, 100 Ill. App. 3d 396, 426 N.E.d 1078 (1st Dist. 1981); *People v. Riegler*, 111 Cal. App. 3d 582, 168 Cal. Rptr. 816 (1980). The Petitioner respectfully submits that the minority view adopted by the Illinois Court in the instant case and by the California Court in *Riegler* represents not only an unwarranted expansion and misapplication of the principle that the Fourth Amendment protects only legitimate expectations of privacy and a divisive conflict among the many courts of the United States, but also an unresolved and "oft-recurring issue that should finally be resolved by this Court.

As this Court has long held, the Fourth Amendment protects only those areas in which a person has a legitimate expectation of privacy, not those areas in which he holds a mere subjective belief that no one will enter. *Katz v. United States*, 389 U.S. 347 (1967); *Rakas v. Illinois*, 439 U.S. 128 (1978). Indeed, an individual must establish a legitimate expectation of privacy in the area searched as a constitutional prerequisite to establishing a Fourth Amendment violation. *Rawlings v. Kentucky*, 448 U.S. 98 (1980). Further, as regards items sent through the mails, when the consignor of a package has "reason to assume that it would be opened before it arrives at its designation," as is certainly true in the case of a package shipped across the border, he has no expectation of privacy in the package which will be recognized as legitimate for purposes of the Fourth Amendment. *Walter v. United States*, 447 U.S. 649, n. 12. Thus, while a person may believe that he has found the perfect hiding place, he can have no reasonable or protected expectation that he or his possessions will not be discovered if others have the right to inspect the contents of the package.

In the case at bar, respondent could have had no legitimate expectation of privacy in the contents of the container. The

contraband was packaged inside a table top and shipped through the international mail from Calcutta, India, to respondent at his apartment in Chicago, Illinois. Although every package shipped across the border is not searched, any package may properly and lawfully be searched and seized by Customs officers as it crosses the border. *United States v. Ramsey*, 431 U.S. 606 (1977); *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973). In fact, in the case at bar, the package was indeed searched by a customs inspector as it crossed the border and the contraband was discovered. Therefore, respondent could have had no expectation of privacy, legitimate or otherwise, in the contents of the package and its subsequent seizure violated no right of respondent which was protected by the Fourth Amendment. *United States v. Washington*, 586 F.2d 1147 (7th Cir. 1979); *United States v. Garcia*, 605 F.2d 349 (7th Cir. 1979), *cert. denied*, 446 U.S. 984 (1980). Indeed, as was held in *United States v. Bulgier*, 618 F.2d 472 (7th Cir. 1980) and in *United States v. Andrews*, 618 F.2d 646 (10th Cir. 1980), a subsequent warrantless search of a package that has already been lawfully searched and then delivered under controlled conditions violates no right protected by the Fourth Amendment. As these courts have recognized, the subsequent search is merely the reassertion of control over the package and its contents which does not implicate the Fourth Amendment.

Although recognizing the legitimacy of the initial search and the discovery of the marijuana by the customs inspector (Pet. 7a), the Illinois Appellate Court nevertheless felt that defendant possessed a protected expectation of privacy in the package. Confusing the constitutional distinction between a subjective and a legitimate expectation of privacy, the Illinois Court believed that the decisions in *United States v. Chadwick*, 443 U.S. 1 (1977), and *Arkansas v. Sanders*, 442 U.S. 753 (1979), required the suppression of the marijuana because no warrant had been secured prior to the reopening of the

package. The Appellate Court mistook this Court's comment in *Sanders* that "[t]he mere reasonableness of a search assessed in light of the surrounding circumstances, is not a substitute for the judicial warrant required under the Fourth Amendment," 442 U.S. at 758, for a judicial command that a warrant is required anytime a package is seized, regardless of the surrounding circumstances.

The Illinois Court, blindly equating the container in the instant case, which had previously been subjected to a lawful search and delivered under controlled conditions, to the double locked footlocker in *Chadwick* and the suitcase in *Sanders*, both of which had never been subjected to a prior lawful search or seizure, believed that respondent had a legitimate expectation of privacy in the smuggled contraband that arose when Customs Inspector Drozek resealed the container and arranged for its controlled delivery. This belief is patently erroneous. See, *United States v. Bulgier*, 618 F.2d 472 (7th Cir. 1980), *cert. denied*, 449 U.S. 843 (1980); *United States v. Andrews*, 618 F.2d 646 (10th Cir. 1980), *cert. denied*, 449 U.S. 824 (1980).

Although *Chadwick* and *Sanders* did hold that a warrant was required before the containers involved there were opened, there is a difference of Constitutional dimension between those searches and the one involved here. In both *Sanders* and *Chadwick* the respondents had manifested an expectation that the contents of their respective packages would remain free from public examination. In contrast, when the instant respondent arranged for the contraband to be sent to him from India through the international mail, he manifested a specific recognition that the package would be the object of a lawful customs inspection. And, this Court has certainly never so much as suggested that an individual has a Constitutionally protected expectation of privacy in a package when, by his own actions, that person causes the contents of his

package to be exposed to public examination. In fact, it could not have done so without rejecting its express determination in *Rakas and Rawlings* that the Fourth Amendment only protects legitimate expectations of privacy.

What the minority view, as expressed by the Illinois Court in the case at bar, fails to appreciate is that the prior lawful customs inspection of the container prevented the table top from being a mere *Chadwick* or *Sanders* package. Rather, as noted by the Seventh Circuit Court of Appeals in distinguishing *Sanders* and *United States v. Berry*, 560 F.2d 861 (7th Cir. 1977):

> Except for the facts that *Sanders* involved luggage and *Berry* involved an attache case, the two cases bear little factual resemblence to the present case, which involves luggage but also involves an earlier private search by nongovernment persons and a "controlled delivery" by the government to the defendant. *United States v. Bulgier*, 618 F.2d 472, 475-476 (7th Cir. 1980).

In summary, the minority view, as most recently expressed by the holding of the Illinois Appellate Court in the case at bar, is not only in direct conflict with the fundamental principle consistently espoused by this Court that the Fourth Amendment protects only legitimate expectations of privacy, but represents a divisive conflict among the many courts of the United States. Moreover, although this Court has never addressed the issue now squarely presented, as Justice Rehnquist recognized in granting a stay in *Riegler*, the issue represents a very important Fourth Amendment question that should be resolved by this Court. Therefore, petitioner respectfully urges this Court to grant this petition and to issue the writ so that this Court may finally decide the "oft-recurring" issue left unresolved in *Chadwick, Sanders* and *Walters,* and which has generated considerable conflict among the various courts of the United States.

CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully pray that a writ of *certiorari* issue to review the judgment of the Illinois Appellate Court, First Judicial District, Second Division.

Respectfully submitted,

TYRONE C. FAHNER
Attorney General, State of Illinois,
188 West Randolph Street, Suite 2200,
Chicago, Illinois 60601

Attorney for Petitioner

RICHARD M. DALEY
State's Attorney, County of Cook,
Room 500, Richard J. Daley Center,
Chicago, Illinois 60602
(312) 443-4322
MICHAEL E. SHABAT,
JOAN S. CHERRY,

Counsel of Record

JOEL A. STEIN,
MICHAEL J. KELLY,
Assistant State's Attorneys

Of Counsel

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